

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

TELECO, INC., WILLIAM M. ROGERS,  
and WILLIAM "BILLY" MICHAEL  
ROGERS II,

Plaintiffs,

v.

BRETT MUTOLO,

Defendant.

Civil Action No: 6:23-cv-03563-JD

**MOTION TO DISMISS AMENDED  
VERIFIED COMPLAINT**

**AND INCORPORATED  
MEMORANDUM**

Pursuant to Federal Rules of Civil Procedure 12(b)(1), Defendant Brett Mutolo hereby moves to dismiss the Amended Verified Complaint. The reason for this motion is that there is no diversity of citizenship, and therefore the Court lacks subject matter jurisdiction.

**STANDARD OF REVIEW**

Plaintiffs bear the burden of establishing subject matter jurisdiction in response to a Rule 12(b)(1) motion, and the Court may consider evidence outside the pleadings:

When a Rule 12(b)(1) motion challenge is raised to the factual basis for subject matter jurisdiction, the burden of proving subject matter jurisdiction is on the plaintiff. In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.

*Richmond, Fredericksburg & Potomac R.R. v. United States*, 945 F.2d 765, 768-769 (4<sup>th</sup> Cir. 1991). "The district court should apply the standard applicable to a motion for summary judgment, under which the nonmoving party must set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists." *Richmond*, 945 F.2d at 769 (emphasis added).

## **FACTS**

Plaintiffs allege diversity jurisdiction under 28 U.S.C. § 1332 on the basis that Plaintiffs are South Carolina citizens and Defendant is a Florida citizen. (Am. Compl. ¶¶ 9-12, 14). Plaintiff William M. Rogers (“Rogers Sr.”), however, is **a citizen of Florida**, as established by the following documents:

1. **Physical presence and current residence in Florida.**

A LexisNexis Person Report shows Rogers Sr. current active address to be in Sarasota, Florida, with a prior address in Bradenton, Florida. The report is excerpted here:<sup>1</sup>



1 OF 1 RECORD(S)  
**SmartLinx® Person Report**

Report Created: 12-13-2023 10:06 AM EST | FOR INFORMATIONAL PURPOSES ONLY | Copyright © 2023 LexisNexis. All rights reserved.

Report created for: Wyche, Pa

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**Address Summary (1 current, 26 prior)**

No.	Address	Status	To-From	Phone
1.	1058 N Tamiami Trl Ste 108-185 Sarasota, FL 34236-2416	Current	11/2021 - 11/2023 (Current Residence)	

Neighborhood Profile

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7.	5215 88th St E Bradenton, FL 34211-3715 Manatee County (Residential)	Prior	09/2018 - 03/2022	
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<sup>1</sup> The entire report has not been filed because it contains substantial amounts of personal information. It has been provided to Plaintiffs and is available to file upon request.

2. **Declaration of Domicile in Florida** (attached as Exhibit A).

Rogers Sr. filed with the Clerk of Court of Manatee County, Florida, a “Declaration of Domicile” in which he swore before a Notary on April 29, 2021, that he “reside[s] in and maintain[s] a place of abode at 5215 88<sup>th</sup> St. East, Bradenton, Florida 342112” that this Florida abode “constitutes my predominant and principal home”; that he “intend[s] to continue it permanently as such”; and that he is “a bona fide resident of the State of Florida” and that he “formerly resided at Isle of Palms, Charleston County, South Carolina.” (Ex. A (emphasis added)).

3. **Registration to Vote in Florida**

Rogers Sr. is actively registered to vote in Florida as of September 11, 2018, as demonstrated by online information from the Florida Department of State:<sup>2</sup>

The screenshot shows the Florida Department of State's Voter Information Lookup page. At the top, there is a navigation bar with links to Corporations, Cultural Affairs, Elections, Historical Resources, and Library and Information Services. Below the navigation bar is a large graphic featuring the American flag's stars and stripes. The main title "Voter Information Lookup" is displayed prominently in white text on a blue background.

Below the title, a message reads: "Please find your voter registration information below." A table displays the following voter registration information:

Full Name:	WILLIAM MICHAEL ROGER S
Street Address:	1068 N TAMiami TRL 108-186
City:	BARA BOTIA
Zip Code:	34238
County Name:	BARA BOTIA
Voter Identification Number:	128081400
Date Of Registration:	8/11/2018
Party:	Republican Party of Florida
Voter Status:	Active*

A note below the table states: "\* An active voter means the person is registered to vote. The deadline to register to be eligible to vote in an upcoming election is 29 days before that election." There is also a link to "Access Ballot and Precinct Information available through your county Supervisor of Elections' website."

At the bottom of the page, there is a "New Search" button and a note: "Please email BvRSHelp@dos.myflorida.com for website assistance." The footer includes the Florida Division of Elections logo, contact information for the Governor and Secretary of State, and links to various state government websites.

<sup>2</sup> <https://registration.elections.myflorida.com/en/CheckVoterStatus> [last visited 4/29/2024].

4. **Drivers License issued in Florida.** The same LexisNexis Person Report referenced above shows the most recent driver's license issued to Rogers Sr. is a Florida driver's license issued on May 3, 2021, and expiring in June 2029:



**1 OF 1 RECORD(S)**

**SmartLinx®Person Report**

Report Created: 12-13-2023 10:06 AM EST | FOR INFORMATIONAL PURPOSES ONLY | Copyright © 2023 LexisNexis. All rights reserved.

Report created for: Wyche, Pa

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**Licenses/Voter (7 licenses)**

**Driver Licenses - 3 licenses**

No.	DL Name/Address	Status	Issued/Expired	Location
1.	Rogers, William Michael 5215 88th St E Bradenton, FL 34211-3715	Historical	Issued: 05/03/2021 Expires: 06/2029	FL

5. **Real property owned in Florida.**

The same LexisNexis Person Report referenced above shows the ownership of industrial property in Florida in the name of Rogers Sr.:

10.	FL County/FIPS: GREENVILLE/12011 Source: A	Current	\$2,083,000.00		FL
<b>Owner Info</b>					
<b>Rogers, William M</b>					
430 Woodruff Rd Ste 300 Greenville, SC 29607-3464					
<b>Legal Info</b>					
Parcel Number: 48-42-23-28-0064 Sale Date: 07/31/2006					

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William\_Rogers

Assessment Year: 2007
Sale Price: \$2,083,000.00
Recording Date: 08/08/2006
Document Type: Assessor
Assessed Value: \$1,724,370.00
Market Land Value: \$1,724,370.00
Total Market Value: \$1,724,370.00
Type of Address: Industrial Acreage
Legal Description: CENTER PORT PLAT 164-13 B PART OF PARCEL F DESC'D AS,C
Book/Page: 42554/144

## 6. Watercraft registered in Florida.

The same LexisNexis Person Report referenced above shows the registration of a boat in Florida in the name of Rogers Sr.:

15.	Watercraft	Current	2023 SEA RAY BOATS		SERY1763B323	FL
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### Watercraft Info

Vessel Service Type: PLEASURE VESSEL  
Length (Ft-In): 39-0  
Hull Type: FIBERGLASS  
Use: PLEASURE VESSEL  
Vessel Year: 2023

### Registrant Info

State: Florida  
Number: DO1337314

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William\_Rogers

Status: ACTIVE  
Registration Date: 06/01/2023  
Expiration Date: 06/08/2025  
Date Last Seen: 06/01/2023

### Source Information

Data Source: GOVERNMENTAL

### Owner 1

Rogers, William Michael  
606 S Military Trl  
Deerfield Beach, FL 33442-3023

**ARGUMENT**

The key to determining citizenship for purposes of diversity jurisdiction is determining **domicile**. A person may have multiple residences but only has one domicile. Domicile is determined at the time the Complaint was filed. *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 571 (2004). Domicile requires “**physical presence, coupled with an intent to make the State a home.**” *Johnson v. Advance Am.*, 549 F.3d 932, 937 n. 2 (4th Cir. 2008) (emphasis added) (citing *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) (“For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain there.”)). “When citizenship is questioned, a court must make an individualized inquiry relying on certain factors such as voter registration; current residence; the location of real and personal property; location of bank and brokerage accounts; membership in clubs, churches, or other associations; place of employment or business; driver’s license and automobile registration; and the state to which a person pays taxes.” *Scott v. Cricket Commc’ns, LLC*, 865 F.3d 189, 195 (4th Cir. 2017).

Here, public records show that Rogers Sr. is physically located in Florida with a current address in Sarasota, Florida (November 2021 to current date of report), and a former address in Bradenton, Florida (September 2018 to March 2022). He also filed a sworn statement in Florida in April 2021 (over two years before bringing this lawsuit) indicating his purpose and intention of establishing his domicile in Florida at the address in Bradenton, Florida. He swore under oath that Florida was his predominant and principal home in April 2021 and that he specifically “intend[ed] to continue it permanently as such.” (Ex. A). There could be no more direct evidence of his intention to make the State of Florida his home, which is the essence of the domicile inquiry.

Although courts might discount self-serving statements of domicile for the purpose of establishing or avoiding jurisdiction, this statement was filed in advance of Rogers Sr. having any self-serving purpose to establish diversity jurisdiction. The sworn declaration of domicile was filed in April 2021, which is before he even first heard of Brett Mutolo in June 2021, which is when Plaintiffs allege the fraudulent scheme began (Am. Compl. ¶¶ 19, 23-24). Accordingly, the Declaration of Domicile warrants substantial weight and, when combined with the other evidence, is controlling.

In addition, as outlined above, Rogers Sr. is registered to vote in Florida since September 2018, was issued a driver's license in Florida in May 2021 (showing his residence as the Bradenton address), owns commercial real property, and registered a boat in Florida in June 2023. Each of these facts are significant indicia of domicile and citizenship in Florida, and they further support a physical presence in Florida and an intention for Florida to be his home. See *Scott*, 865 F.3d at 195.

Because the burden is upon Plaintiffs to establish diversity jurisdiction, it is necessary for them to come forward and "set forth specific facts beyond the pleadings to show that a genuine issue of material fact exists." *Richmond*, 945 F.2d at 769. Plaintiffs failed to offer any such evidence in prior motions (before the filing of the Amended Complaint), when the potential of diversity jurisdiction was raised informally. Rather than offer an affidavit from Rogers Sr. himself, Plaintiffs offered an affidavit from Mr. Rogers's accountant that skirted the issues and failed to address the elements of domicile (i.e., physical presence and intention to remain).

Although Plaintiffs likely will cite to some evidence of residency in South Carolina, residency is insufficient to demonstrate domicile, as a person may have multiple residents but only may have one domicile. See *Axel Johnson, Inc. v. Carroll Carolina Oil Co.*, 145 F.3d 660, 663

(4th Cir. 1998). The LexisNexis report cited above also shows real property owned by Rogers Sr. in South Carolina and three vehicles registered in South Carolina, but this evidence fails to meet Plaintiffs' burden to demonstrate domicile and it pales in comparison to the evidence cited above that Rogers Sr. resides in Florida, votes in Florida, has a driver's license in Florida, owns real and personal property in Florida, and (most importantly) declares Florida as his permanent home where he intends to remain. Without evidence of domicile in South Carolina that is sufficient to meet Plaintiffs' burden and overcome the substantial and definitive evidence of domicile in Florida as outlined above, Defendant Brett Mutolo is entitled to dismissal for lack of subject matter jurisdiction.

### **CONCLUSION**

For the above reasons, Defendant Brett Mutolo respectfully requests the Court dismiss the Amended Complaint.

Respectfully submitted,

**WYCHE, P.A.**

*s/William M. Wilson III*

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*Attorneys for Defendant Brett Mutolo*

April 29, 2024  
Greenville, South Carolina